

Mindy Coal, Inc. and United Mine Workers of America and United Mine Workers of America, Local Union 8217. Cases 9-CA-29947, 9-CA-29655, and 9-CA-30122

April 12, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed on June 9, 1992, by United Mine Workers of America (UMWA) in Case 9-CA-29655, and amended charges filed in Case 9-CA-29947 on September 16, 1992 (October 19, 1992), and in Case 9-CA-30122 on November 4, 1992 (December 7, 1992), by United Mine Workers of America, Local Union 8217 (Local 8217), the General Counsel of the National Labor Relations Board issued a third consolidated complaint alleging, inter alia, that Mindy Coal, Inc., the Respondent, has violated Section 8(a)(5) and (1) of the National Labor Relations Act.¹ Although properly served copies of the charges and third consolidated complaint, the Respondent has failed to file an answer.

On March 15, 1993, counsel for the General Counsel filed a Motion for Summary Judgment. On March 18, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The third consolidated complaint states that unless an answer is filed within 14 days of service, "all the allegations in the third consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated January 28, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business February 4, 1993, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

¹ The charges filed against the Respondent were consolidated for hearing with other matters. On February 9, 1993, the Regional Director for Region 9 ordered the cases against the Respondent severed from the other matters alleged in the consolidated complaint and scheduled for hearing because the Respondent had failed to file an answer to the consolidated complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the mining of coal near Man, West Virginia. Since it commenced operations about August 1, 1992, the Respondent, in the conduct of its operations, sold and shipped from its Man, West Virginia facility goods valued in excess of \$50,000 directly to M & H Coal Company, a nonretail enterprise located within the State of West Virginia which meets the Board's direct jurisdictional standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 8217 and UMWA are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about August 1, 1992, Local 8217, pursuant to Section 9(a), has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit as described in article 1A of the national bituminous coal wage agreement of 1988 and has, since then, been recognized as such by the Respondent in a collective-bargaining agreement entered into between the Respondent and UMWA on behalf of its locals and districts, including Local 8217, which is effective through February 1, 1993.

The Respondent has failed to continue in effect all the terms and conditions set forth in the applicable collective-bargaining agreement by engaging in the following conduct: since about May 3, 1992, failing to give notice or to schedule vacations; since about August 1, 1992, failing to provide its unit employees with health insurance coverage as required by the contract and failing to timely remit dues that were checked off pursuant to article 15 of the agreement; since about November 6, 1992, repudiating the grievance-arbitration procedure set forth in the parties' agreement, refusing to process a grievance, and implying that further attempts to process a grievance would be futile. The above conduct relates to the unit employees' terms and conditions of employment and are mandatory subjects of bargaining. The Respondent engaged in such conduct without Local 8217's or UMWA's consent.

Further, on about August 20, 1992, Local 8217, by the filing of a grievance, requested that the Respondent provide it with information relating to the deduction and remittance of union dues deducted from the unit employees' wages and relating to health insurance coverage and health insurance premium payments for unit employees. The Respondent, since about the same

date, has failed and refused to do so. On about September 15, 1992, Local 8217, by the filing of a grievance, further requested that the Respondent furnish it with information regarding the health insurance coverage for unit employees and, since about the same date, the Respondent has declined to do so. The information requested by Local 8217 is necessary for and relevant to Local 8217's performance of its duties as the collective-bargaining representative of the Respondent's unit employees.

By engaging in all of the above-described conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the unit employee's exclusive bargaining representative within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing and refusing to give notice or to schedule vacations, failing to provide unit employees with contractually required health insurance coverage, failing to timely remit dues that were checked off pursuant to article 15 of its agreement with Local 8217, repudiating the grievance-arbitration procedure of that agreement, refusing to process a grievance, implying that further attempts to process a grievance would be futile, and refusing to provide Local 8217 with certain necessary and relevant information requested by Local 8217, the Respondent has failed and refused to bargain collectively and in good faith with the unit employees' exclusive collective-bargaining representative, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to continue in effect all the terms and conditions of its collective-bargaining agreement by giving notice to the employees and/or Local 8217 or by scheduling vacations, by providing unit employees with health insurance coverage, by abiding by the grievance-arbitration procedure and by processing the grievance it refused to process on about November 6, 1992, and by providing Local 8217 with the necessary and relevant information requested by Local 8217 on about August 20 and September 15, 1992. The Respondent shall also be ordered to timely remit dues that were checked off from the unit employees' wages but which may not have not been forwarded since about August 1, 1992, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, the Respondent shall also

be required to make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure to continue in effect the terms and conditions of its agreement with Local 8217, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest on such amounts be computed as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Mindy Coal, Inc., Man, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect all the terms and conditions of its collective-bargaining agreement with United Mine Workers of America, Local Union 8217, which is the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit as described in article 1A of the national bituminous coal wage agreement of 1988, by failing to give notice or to schedule vacations, failing to provide employees with health insurance coverage, failing to timely remit dues that were checked off pursuant to article 15 of its collective-bargaining agreement, repudiating the contract's grievance-arbitration procedure, refusing to process a grievance, implying that any further attempts to process a grievance would be futile, and refusing to comply with Local 8217's request for certain necessary and relevant information.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide unit employees and/or Local 8217 with notice or schedule vacations which it has not done since about May 3, 1992, provide unit employees with the health insurance coverage that has not been provided since about August 1, 1992, abide by the grievance-arbitration procedure of the parties' agreement, process the grievance that it has refused to process since about November 6, 1992, and provide Local 8217 with the necessary and relevant information requested on about August 20 and September 15, 1992, relating to the deduction and remittance of union dues from the unit employees' wages, and to the health insurance coverage and health insurance premium payments of unit employees.

(b) Remit to Local 8217 all dues that were checked off from the unit employees' wages but which may not have not been remitted since about August 1, 1992, with interest as described in the remedy section of this decision.

(c) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure and refusal to continue in effect all the terms of its agreement with Local 8217, with interest as set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Man, West Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, without the consent of United Mine Workers of America, Local Union 8217, which is the

designated exclusive collective-bargaining representative of our employees in an appropriate unit as described in article 1A of the national bituminous coal wage agreement of 1988, or its parent International, United Mine Workers of America, fail to continue in effect all the terms and conditions of our agreement with Local 8217 by failing to give notice or to schedule vacations, failing to provide unit employees with health insurance coverage, failing to timely remit dues that were checked off from unit employees' wages, repudiating the grievance-arbitration procedure in the agreement, refusing to process a grievance, and by implying that further attempts to file a grievance would be futile.

WE WILL NOT fail and refuse to provide Local 8217 with information that is necessary for and relevant to Local 8217's performance of its duties as the unit employees' exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect all the terms and conditions of our collective-bargaining agreement with the Union by giving notice or scheduling vacations which we have not done since about May 3, 1992, by providing unit employees with health insurance coverage that has not been since about August 1, 1992, by timely remitting, with interest, all dues that were checked off from unit employees' wages but which may not have been forwarded since about August 1, 1992, and by processing the grievance which we refused to process on about November 6, 1992.

WE WILL furnish Local 8217 with the relevant and necessary information it requested on about August 20 and September 15, relating to the deduction and remittance of union dues from the wages of unit employees, and relating to health insurance coverage and health insurance premium payments for unit employees.

MINDY COAL, INC.